

IC 6-6-2.5

Chapter 2.5. Special Fuel Tax

IC 6-6-2.5-1

"Alternative fuel" defined

Sec. 1. As used in this chapter, "alternative fuel" means a liquefied petroleum gas, compressed natural gas product, or a combination of liquefied petroleum gas and a compressed natural gas product, not including a biodiesel fuel or biodiesel blend, used in an internal combustion engine or motor to propel any form of vehicle, machine, or mechanical contrivance. The term includes all forms of fuel commonly or commercially known or sold as butane, propane, or compressed natural gas.

As added by P.L.277-1993(ss), SEC.44. Amended by P.L.122-2006, SEC.19.

IC 6-6-2.5-1.5

"Biodiesel" defined

Sec. 1.5. (a) As used in this chapter, "biodiesel" means a renewable, biodegradable, mono alkyl ester combustible liquid fuel derived from agricultural plant oils or animal fats that meets American Society for Testing and Materials specifications D6751-03a Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, as well as other fuels of the same derivation capable of use in the generation of power for the propulsion of a motor vehicle, airplane, or motorboat.

(b) As used in this chapter, "blended biodiesel" means a blend of biodiesel with petroleum diesel fuel so that the volume percentage of biodiesel in the blend is at least two percent (2%). A biodiesel blend may be described as "Bxx" where "xx" represents the volume percentage of biodiesel fuel. "B2" is the type of biodiesel blend with the least volume percentage of biodiesel fuel, and "B99" is the type of biodiesel fuel with the most volume percentage of biodiesel fuel. The term does not include biodiesel (B100).

As added by P.L.122-2006, SEC.20.

IC 6-6-2.5-2

"Blender" defined

Sec. 2. As used in this chapter, "blender" means a person who engages in the process of blending.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-3

"Blending" defined

Sec. 3. As used in this chapter, "blending" means the mixing of one (1) or more petroleum products, with or without another product, excluding biodiesel or blended biodiesel, if the product obtained by the blending is capable of use in the generation of power for the propulsion of a motor vehicle, an airplane, or a motorboat. The term does not include that blending that occurs in the process of refining

by the original refiner of crude petroleum or the blending of a de minimis amount of products such as carburetor detergent, oxidation inhibitor, lubricating oil, and greases.

As added by P.L.277-1993(ss), SEC.44. Amended by P.L.85-1995, SEC.13; P.L.122-2006, SEC.21.

IC 6-6-2.5-4

"Bulk end user" defined

Sec. 4. As used in this chapter, "bulk end user" means a person who receives into the person's own storage facilities at least two hundred forty thousand (240,000) gallons annually of special fuel for the person's own consumption.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-5

"Bulk plant" defined

Sec. 5. As used in this chapter, "bulk plant" means a gasoline or special fuel storage facility, other than a terminal, that is primarily used for redistribution of gasoline and special fuel by a motor vehicle with a capacity of not more than five thousand four hundred (5,400) gallons.

As added by P.L.277-1993(ss), SEC.44. Amended by P.L.85-1995, SEC.14.

IC 6-6-2.5-6

"Commissioner" defined

Sec. 6. As used in this chapter, "commissioner" means the administrative head of the department or that person's designee.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-7

"Department" defined

Sec. 7. As used in this chapter, "department" means the department of state revenue.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-8

"Destination state" defined

Sec. 8. As used in this chapter, "destination state" means the state for which a motor vehicle or barge is destined for off-loading into storage facilities for consumption or resale.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-8.5

"Dyed fuel user" defined

Sec. 8.5. As used in this chapter, "dyed fuel user" means a person that qualifies for the federal diesel fuel tax exemption under Section 4082 of the Internal Revenue Code to operate motor vehicles on the highways with dyed fuel in the fuel supply tank.

As added by P.L.61-1996, SEC.1.

IC 6-6-2.5-9**"Export" defined**

Sec. 9. As used in this chapter, "export" means:

- (1) with respect to a seller, when special fuel is delivered out-of-state by or for the seller; and
- (2) with respect to a purchaser, when special fuel is delivered out-of-state by or for the purchaser.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-10**"Exporter" defined**

Sec. 10. As used in this chapter, "exporter" means any person, other than a supplier, who purchases special fuel in Indiana for the purpose of transporting or delivering the fuel to another state or country.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-11**Repealed**

(Repealed by P.L.210-2005, SEC.76.)

IC 6-6-2.5-12**"Heating oil" defined**

Sec. 12. As used in this chapter, "heating oil" means a special fuel that is burned in a boiler, furnace, or stove for heating or industrial processing purposes.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-13**"Import" defined**

Sec. 13. As used in this chapter, "import" means:

- (1) with respect to a seller, when special fuel is delivered into Indiana from out-of-state by or for the seller; and
- (2) with respect to a purchaser, when special fuel is delivered into Indiana from out-of-state by or for the purchaser.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-13.1**"Import verification number" defined**

Sec. 13.1. As used in this chapter, "import verification number" means the number assigned by the department, or the department's designee or appointee, with respect to a single transport truck delivery into Indiana from another state upon request for an assigned number by a licensed importer or transporter carrying undyed or unmarked special fuel, or both, into Indiana for the account of a licensed importer.

As added by P.L.18-1994, SEC.12. Amended by P.L.85-1995, SEC.15.

IC 6-6-2.5-14

"Invoiced gallons" defined

Sec. 14. As used in this chapter, "invoiced gallons" means the gallons accurately billed on an invoice on payment to a supplier.
As added by P.L.277-1993(ss), SEC.44. Amended by P.L.18-1994, SEC.13.

IC 6-6-2.5-15

"Liquid" defined

Sec. 15. As used in this chapter, "liquid" means any substance that is liquid in excess of sixty (60) degrees fahrenheit and a pressure of fourteen and seven-tenths (14.7) pounds per square inch absolute.
As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-16

"Motor vehicle" defined

Sec. 16. As used in this chapter, "motor vehicle" means a vehicle designed principally for road use and that is propelled by an internal combustion engine or motor.
As added by P.L.277-1993(ss), SEC.44. Amended by P.L.18-1994, SEC.14.

IC 6-6-2.5-16.1

"Permissive supplier" defined

Sec. 16.1. As used in this chapter, "permissive supplier" means any person who does not meet the geographic jurisdictional connections to Indiana required of a supplier (as defined in section 23 of this chapter), but who holds an inventory position in a federally qualified terminal located outside of Indiana and who is registered under Section 4101 of the Internal Revenue Code.
As added by P.L.18-1994, SEC.15.

IC 6-6-2.5-17

"Person" defined

Sec. 17. As used in this chapter, "person" means a natural person, a partnership, a firm, an association, a corporation, a representative appointed by a court, the state, a political subdivision (as defined in IC 36-1-2-13), or any other entity, group, or syndicate.
As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-18

"Public highway" defined

Sec. 18. As used in this chapter, "public highway" means the entire width between boundary lines of each publicly maintained way in Indiana, including streets and alleys in cities and towns, when any part of the way is open to the public use for motor vehicle travel.
As added by P.L.277-1993(ss), SEC.44. Amended by P.L.18-1994, SEC.16.

IC 6-6-2.5-19

"Rack" defined

Sec. 19. As used in this chapter, "rack" means a dock, a platform, or an open bay with a series of metered pipes and hoses for delivering special fuel from a refinery or terminal into a motor vehicle, rail car, or marine vessel.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-20

"Received" defined

Sec. 20. As used in this chapter, "received" means the removal from any refinery or terminal in Indiana, or the entry into Indiana of any special fuel for consumption, use, sale, or warehousing, except for transfers in bulk into or within a terminal in Indiana between registered suppliers. The tax imposed under section 28 of this chapter with respect to special fuel removed from terminals within Indiana and with respect to special fuel which is the subject of a tax precollection agreement pursuant to section 35(j) of this chapter, shall be imposed at the same time and in the same manner as the tax imposed by Sections 4081 to 4083 of the Internal Revenue Code. The definitions of the terms "removal", "entry", and "transfers in bulk" shall have the same meanings described in the Internal Revenue Code or Code of Federal Regulations.

As added by P.L.277-1993(ss), SEC.44. Amended by P.L.18-1994, SEC.17.

IC 6-6-2.5-21

"Retailer" defined

Sec. 21. As used in this chapter, "retailer" means a person that engages in the business of selling or distributing special fuel to the end user within Indiana.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-22

"Special fuel" defined

Sec. 22. As used in this chapter, "special fuel" means all combustible gases and liquids that are:

- (1) suitable for the generation of power in an internal combustion engine or motor; or
- (2) used exclusively for heating, industrial, or farm purposes other than for the operation of a motor vehicle.

Special fuel includes biodiesel and blended biodiesel (as defined in IC 6-6-2.5-1.5). However, the term does not include gasoline (as defined in IC 6-6-1.1-103), ethanol produced, stored, or sold for the manufacture of or compounding or blending with gasoline, alternative fuels, kerosene, and jet fuel (if the purchaser of the jet fuel has provided to the seller proof of the purchaser's federal jet fuel registration at or before the time of sale).

As added by P.L.277-1993(ss), SEC.44. Amended by P.L.18-1994, SEC.18; P.L.122-2006, SEC.22.

IC 6-6-2.5-23

"Supplier" defined

Sec. 23. As used in this chapter, "supplier" means a person that imports or acquires immediately upon import into Indiana special fuel by pipeline or marine vessel from within a state, territory, or possession of the United States into a terminal or that imports special fuel into Indiana from a foreign country, or that produces, manufactures, or refines special fuel within Indiana, or that owns special fuel in the pipeline and terminal distribution system in Indiana, and is subject to the general taxing or police jurisdiction of Indiana, and in any case is also registered under Section 4101 of the Internal Revenue Code for transactions in taxable motor fuels in the bulk distribution system. A terminal operator shall not be considered a supplier merely because the terminal operator handles special fuel consigned to it within a terminal.

As added by P.L.277-1993(ss), SEC.44. Amended by P.L.18-1994, SEC.19.

IC 6-6-2.5-24

"Terminal" defined

Sec. 24. As used in this chapter, "terminal" means a fuel storage and distribution facility that is supplied by pipeline or marine vessel, and from which special fuel may be removed at a rack and that has been registered as a qualified terminal by the Internal Revenue Service for receipt of taxable motor fuels free of federal motor fuel taxes.

As added by P.L.277-1993(ss), SEC.44. Amended by P.L.18-1994, SEC.20.

IC 6-6-2.5-25

"Terminal operator" defined

Sec. 25. As used in this chapter, "terminal operator" means the person who by ownership or contractual agreement is charged with the responsibility and physical control over the operation of the terminal. However, there shall be only one (1) person charged with responsibility as operator at each terminal for purposes of this chapter.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-25.1

"Transfer in bulk into or within a terminal" defined

Sec. 25.1. As used in this chapter, "transfer in bulk into or within a terminal" includes the following:

- (1) A marine barge movement of fuel from a refinery or terminal to a terminal.
- (2) Pipeline movements of fuel from a refinery or terminal to terminal.
- (3) Book transfers of product within a terminal between suppliers before completion of removal across the rack.
- (4) Two (2) party exchanges between licensed suppliers and permissive suppliers.

As added by P.L.18-1994, SEC.21.

IC 6-6-2.5-25.9

"Transporter" defined

Sec. 25.9. As used in this chapter, "transporter" means the person and its agent, including the driver, that transports special fuel.

As added by P.L.85-1995, SEC.16.

IC 6-6-2.5-26

"Transmix" defined

Sec. 26. As used in this chapter, "transmix" means the buffer between two (2) different products in a pipeline shipment, or a mix of two (2) different products within a refinery or terminal that results in an off-grade mixture.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-26.1

"Transport truck" defined

Sec. 26.1. As used in this chapter, "transport truck" means a vehicle designed to transport motor fuel in bulk from a terminal in lots greater than five thousand four hundred (5,400) gallons.

As added by P.L.18-1994, SEC.22. Amended by P.L.85-1995, SEC.17.

IC 6-6-2.5-26.2

"Two party exchange" defined

Sec. 26.2. As used in this chapter, "two (2) party exchange" means a transaction in which a product is transferred from one (1) licensed supplier or permissive supplier to another when:

- (1) the transaction includes a transfer from the person who holds the original inventory position for special fuel in the terminal as indicated in the records of the terminal operator; and
- (2) the exchange transaction is completed before removal from the terminal by the receiving exchange partner, provided that the terminal operator in the terminal operator's books and records treats the receiving exchange party as the supplier that receives the product for purposes of reporting the events to the state of Indiana.

As added by P.L.18-1994, SEC.23.

IC 6-6-2.5-27

"Wholesaler" defined

Sec. 27. As used in this chapter, "wholesaler" means a person that acquires special fuel from a supplier or from another wholesaler for subsequent resale to a retail establishment or bulk end user by tank cars, motor vehicles, or both.

As added by P.L.277-1993(ss), SEC.44. Amended by P.L.18-1994, SEC.24.

IC 6-6-2.5-28

License tax; presumptions; computation; liability for collection and remittance; sulfur content; penalty

Sec. 28. (a) A license tax of sixteen cents (\$0.16) per gallon is imposed on all special fuel sold or used in producing or generating power for propelling motor vehicles except fuel used under section 30(a)(8) or 30.5 of this chapter. The tax shall be paid at those times, in the manner, and by those persons specified in this section and section 35 of this chapter.

(b) The department shall consider it a rebuttable presumption that all undyed or unmarked special fuel, or both, received in Indiana is to be sold for use in propelling motor vehicles.

(c) Except as provided in subsection (d), the tax imposed on special fuel by subsection (a) shall be measured by invoiced gallons of nonexempt special fuel received by a licensed supplier in Indiana for sale or resale in Indiana or with respect to special fuel subject to a tax precollection agreement under section 35(d) of this chapter, such special fuel removed by a licensed supplier from a terminal outside of Indiana for sale for export or for export to Indiana and in any case shall generally be determined in the same manner as the tax imposed by Section 4081 of the Internal Revenue Code and Code of Federal Regulations.

(d) The tax imposed by subsection (a) on special fuel imported into Indiana, other than into a terminal, is imposed at the time the product is entered into Indiana and shall be measured by invoiced gallons received at a terminal or at a bulk plant.

(e) In computing the tax, all special fuel in process of transfer from tank steamers at boat terminal transfers and held in storage pending wholesale bulk distribution by land transportation, or in tanks and equipment used in receiving and storing special fuel from interstate pipelines pending wholesale bulk reshipment, shall not be subject to tax.

(f) The department shall consider it a rebuttable presumption that special fuel consumed in a motor vehicle plated for general highway use is subject to the tax imposed under this chapter. A person claiming exempt use of special fuel in such a vehicle must maintain adequate records as required by the department to document the vehicle's taxable and exempt use.

(g) A person that engages in blending fuel for taxable sale or use in Indiana is primarily liable for the collection and remittance of the tax imposed under subsection (a). The person shall remit the tax due in conjunction with the filing of a monthly report in the form prescribed by the department.

(h) A person that receives special fuel that has been blended for taxable sale or use in Indiana is secondarily liable to the state for the tax imposed under subsection (a).

(i) A person may not use special fuel on an Indiana public highway if the special fuel contains a sulfur content that exceeds five one-hundredths of one percent (0.05%). A person who knowingly:

- (1) violates; or
- (2) aids or abets another person to violate;

this subsection commits a Class A infraction. However, the violation is a Class A misdemeanor if the person has committed one (1) prior unrelated violation of this subsection, and a Class D felony if the person has committed more than one (1) unrelated violation of this subsection.

As added by P.L.277-1993(ss), SEC.44. Amended by P.L.18-1994, SEC.25; P.L.85-1995, SEC.18; P.L.33-2007, SEC.1.

IC 6-6-2.5-29

Inventory tax; exclusions; amount

Sec. 29. (a) Persons having title to special fuel in storage and held for sale on the effective date of an increase in the license tax rate imposed under section 28 of this chapter are subject to an inventory tax based on the gallons in storage as of the close of the business day preceding the effective date of the increased license tax rate.

(b) Persons subject to the tax imposed under this section shall:

- (1) take an inventory to determine the gallons in storage for purposes of determining the inventory tax;
- (2) report the gallons listed in subdivision (1) on forms provided by the commissioner; and
- (3) pay the tax due not more than thirty (30) days after the prescribed inventory date.

In determining the amount of special fuel tax due under this section, the person may exclude the amount of special fuel that will not be pumped out of the storage tank because the special fuel is below the mouth of the draw pipe. For this purpose, the person may deduct two hundred (200) gallons for a storage tank with a capacity of less than ten thousand (10,000) gallons, and four hundred (400) gallons for a storage tank with a capacity that exceeds ten thousand (10,000) gallons.

(c) The amount of the inventory tax is equal to the inventory tax rate times the gallons in storage as determined under subsection (b). The inventory tax rate is equal to the difference of the increased license tax rate minus the previous license tax rate.

(d) The inventory tax shall be considered a listed tax for the purposes of IC 6-8.1.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-30

Exemptions from special fuel tax; provision of export information; refunds

Sec. 30. (a) The following are exempt from the special fuel tax:

- (1) Special fuel sold by a supplier to a licensed exporter for export from Indiana to another state or country to which the exporter is specifically licensed to export exports by a supplier, or exports for which the destination state special fuel tax has been paid to the supplier and proof of export is available in the form of a destination state bill of lading.
- (2) Special fuel sold to the United States or an agency or instrumentality thereof.

(3) Special fuel sold to a post exchange or other concessionaire on a federal reservation within Indiana. However, the post exchange or concessionaire shall collect, report, and pay quarterly to the department any tax permitted by federal law on special fuel sold.

(4) Special fuel sold to a public transportation corporation established under IC 36-9-4 and used for the transportation of persons for compensation within the territory of the corporation.

(5) Special fuel sold to a public transit department of a municipality and used for the transportation of persons for compensation within a service area, no part of which is more than five (5) miles outside the corporate limits of the municipality.

(6) Special fuel sold to a common carrier of passengers, including a business operating a taxicab (as defined in IC 6-6-1.1-103(1)) and used by the carrier to transport passengers within a service area that is not larger than one (1) county, and counties contiguous to that county.

(7) The portion of special fuel determined by the commissioner to have been used to operate equipment attached to a motor vehicle, if the special fuel was placed into the fuel supply tank of a motor vehicle that has a common fuel reservoir for travel on a highway and for the operation of equipment.

(8) Special fuel used for nonhighway purposes, used as heating oil, or in trains.

(9) Special fuel sold by a supplier to an unlicensed person for export from Indiana to another state and the special fuel has been dye additized in accordance with section 31 of this chapter.

(10) Sales of transmix between licensed suppliers.

(b) The exemption from tax provided under subsection (a)(4) through (a)(7) shall be applied for through the refund procedures established in section 32 of this chapter.

(c) The department shall provide information to licensed suppliers of the destination state or states to which exporters are authorized to export.

(d) Subject to gallonage limits and other conditions established by the department, the department shall provide for refund of the tax imposed by this chapter to a wholesale distributor exporting undyed special fuel out of a bulk plant in this state in a vehicle capable of carrying not more than five thousand four hundred (5,400) gallons if the destination of that vehicle does not exceed twenty-five (25) miles from the border of Indiana.

As added by P.L.277-1993(ss), SEC.44. Amended by P.L.18-1994, SEC.26; P.L.100-1995, SEC.1.

IC 6-6-2.5-30.5

Exemption from special fuel tax; restricted personal, noncommercial use

Sec. 30.5. (a) Except as provided in subsection (b), special fuel is exempt from the special fuel tax if:

- (1) the special fuel has a nominal biodiesel content of at least twenty percent (20%);
- (2) the special fuel is used only for a personal, noncommercial use and is not for resale; and
- (3) the individual using the special fuel:
 - (A) produces the biodiesel content of the special fuel; and
 - (B) obtains an exemption certificate under subsection (c) before using the special fuel.

(b) The maximum number of gallons of special fuel for which an individual may claim the exemption under this section in a year is equal to:

- (1) two thousand (2,000); divided by
- (2) the average percentage volume of biodiesel in each gallon used by the individual.

(c) The department shall issue an exemption certificate to an individual who produces evidence of nontaxability under subsection (a)(1), (a)(2), and (a)(3). A certificate issued under this subsection is valid for a period determined by the department, but not to exceed five (5) years. The department may allow an individual to renew an exemption certification for additional five (5) year periods. An exemption certificate applies only to special fuel described in subsection (a). An individual holding a certificate issued under this subsection shall notify the department:

- (1) of any address change by the individual; and
- (2) when the individual ceases using special fuel that is exempt under this section.

(d) An individual who is issued an exemption certificate under this section must submit to the department a report, in a form prescribed by the department, not later than January 20 of each year. The report must include:

- (1) the number of gallons of special fuel in the immediately preceding year; and
- (2) the average percentage volume of biodiesel in each gallon of special fuel;

to which the exemption was applied in the calendar year ending on the immediately preceding December 31.

(e) An individual who is issued an exemption certificate under this section is not subject to the reporting requirements under section 35 of this chapter.

As added by P.L.33-2007, SEC.2.

IC 6-6-2.5-31

Exempted special fuels; dye requirements and specifications; markers

Sec. 31. (a) Special fuel exempted under section 30(a)(8) of this chapter shall have dye added to it at or before the time of withdrawal at a terminal or refinery rack. At the option of the supplier, the dye added may be either:

- (1) dye required to be added pursuant to United States Environmental Protection Agency requirements; or
- (2) dye with specifications and amounts as required by the department.

(b) The department may require that special fuel exempted under section 30(a)(8) of this chapter shall have a marker added to the special fuel not later than the time of withdrawal at a terminal or refinery rack. The marker must meet the specifications required by the department.

As added by P.L.277-1993(ss), SEC.44. Amended by P.L.85-1995, SEC.19.

IC 6-6-2.5-32

Refunds; circumstances; claims; investigations

Sec. 32. (a) Special fuel tax that has been collected by a supplier on special fuel used for an exempt purpose, including section 30(a)(4) through 30(a)(7) of this chapter and pretaxed exempt fuel under section 30(a)(8) of this chapter, but which was not dyed or marked, or both, in accordance with section 31 of this chapter, shall be refunded by the department to the user or the user's assignee under rules adopted by the department, in accordance with subsection (c), upon presentation of proof of exempt use by the end user in the form that the department prescribes.

(b) Special fuel tax that has been collected by a supplier on special fuel that was removed from a terminal or refinery for delivery in Indiana, and was exported by a licensed exporter shall be refunded by the department to the licensed exporter in accordance with subsection (c), upon presentation of proof of export in the form that the department prescribes.

(c) Special fuel tax that has been erroneously paid by a person shall be refunded by the department in accordance with subsection (d).

(d) To claim a refund under subsection (a) through (c), a person must present to the department a statement that contains a written verification that the claim is made under penalties of perjury and lists the total amount of special fuel purchased and used for non-highway purposes. The claim must be filed not more than three (3) years after the date the special fuel was purchased. The statement must show that payment for the purchase has been made and the amount of tax paid on the purchase has been remitted.

(e) The department may make any investigations it considers necessary before refunding the special fuel tax to a person.

As added by P.L.277-1993(ss), SEC.44. Amended by P.L.85-1995, SEC.20.

IC 6-6-2.5-32.5

Refund of special fuel tax; qualification; claim for refund

Sec. 32.5. (a) A person that pays the tax imposed by this chapter on the use of special fuel in the operation of an intercity bus (as defined in IC 9-13-2-83) is entitled to a refund of the tax without

interest if the person has:

- (1) consumed the special fuel outside Indiana;
- (2) paid a special fuel tax or highway use tax for the special fuel in at least one (1) state or other jurisdiction outside Indiana; and
- (3) complied with subsection (b).

(b) To qualify for a refund under this section, a special fuel user shall submit to the department a claim for a refund, in the form prescribed by the department, that includes the following information:

- (1) Any evidence requested by the department of the following:
 - (A) Payment of the tax imposed by this chapter.
 - (B) Payment of taxes in another state or jurisdiction outside Indiana.
- (2) Any other information reasonably requested by the department.

As added by P.L.85-1995, SEC.21.

IC 6-6-2.5-33

Payment of interest on refund claim

Sec. 33. If a claim for refund is not issued within ninety (90) days of the filing required by section 32 of this chapter, the department shall pay interest at the rate established by IC 6-8.1-9 from a date that is ninety (90) days after the date that the department receives the claim for refund and all necessary documentation until a date, determined by the commissioner, that does not precede by more than thirty (30) days, the date on which the refund is made.

As added by P.L.277-1993(ss), SEC.44. Amended by P.L.85-1995, SEC.22.

IC 6-6-2.5-34

Supplier deduction for gallons purchased; prohibition; customer refunds; application

Sec. 34. No supplier shall claim a deduction from taxable gallons for gallons actually purchased by the customer, notwithstanding that the supplier has issued a corrective credit or rebilling to a customer adjusting the tax liability. The only remedy available to a customer to offset liability for special fuel tax paid is to apply for a refund as provided by section 32(d) of this chapter.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-35

Collection and remittance of special fuel tax

Sec. 35. (a) The tax on special fuel received by a licensed supplier in Indiana that is imposed by section 28 of this chapter shall be collected and remitted to the state by the supplier who receives taxable gallons in accordance with subsection (b).

(b) On or before the fifteenth day of each month, licensed suppliers and licensed permissive suppliers shall make an estimated payment of all taxes imposed on transactions that occurred during the previous calendar month equal to:

- (1) one hundred percent (100%) of the amount remitted by the licensed supplier or licensed permissive supplier for the month preceding the previous calendar month; or
- (2) ninety-five percent (95%) of the amount actually due and payable by the licensed supplier or licensed permissive supplier for the previous month.

Any remaining tax imposed on transactions occurring during a calendar month shall be due and payable on or before the twentieth day of the following month, except as provided in subsection (i). Underpayments of estimated taxes due and owing the department are not subject to a penalty under section 63(a) of this chapter.

(c) A supplier who sells special fuel shall collect from the purchaser the special fuel tax imposed under section 28 of this chapter. At the election of an eligible purchaser, the seller shall not require a payment of special fuel tax from the purchaser at a time that is earlier than the date on which the tax is required to be remitted by the supplier under subsection (b). This election shall be subject to a condition that the eligible purchaser's remittances of all amounts of tax due the seller shall be paid by electronic funds transfer on or before the due date of the remittance by the supplier to the department, and the eligible purchaser's election under this subsection may be terminated by the seller if the eligible purchaser does not make timely payments to the seller as required by this subsection.

(d) As used in this section, "eligible purchaser" means a person who has authority from the department to make the election under subsection (c) and includes every person who is licensed and in good standing as a special fuel dealer or special fuel user, as determined by the department, as of July 1, 1993, who has purchased a minimum of two hundred forty thousand (240,000) taxable gallons of special fuel each year in the preceding two (2) years, or who otherwise meets the financial responsibility and bonding requirements of subsection (e).

(e) Each purchaser that desires to make an election under subsection (c) shall present evidence of the purchaser's eligible purchaser status to the purchaser's seller. The department shall determine whether the purchaser is an eligible purchaser. The department may require a purchaser that pays the tax to a supplier to file with the department a surety bond payable to the state, upon which the purchaser is the obligor or other financial security, in an amount satisfactory to the department. The department may require that the bond indemnify the department against bad debt deductions claimed by the supplier under subsection (g).

(f) The department shall have the authority to rescind a purchaser's eligibility and election to defer special fuel tax remittances upon a showing of good cause, including failure to make timely payment under subsection (c), by sending written notice to all suppliers and eligible purchasers. The department may require further assurance of the purchaser's financial responsibility, or may increase the bond requirement for that purchaser, or any other action

that the department may require to ensure remittance of the special fuel tax.

(g) In computing the amount of special fuel tax due, the supplier and permissive supplier shall be entitled to a deduction from the tax payable the amount of tax paid by the supplier that has become uncollectible from a purchaser. The department shall adopt rules establishing the evidence a supplier must provide to receive the deduction. The deduction shall be claimed on the first return following the date of the failure of the purchaser if the payment remains unpaid as of the filing date of that return or the deduction shall be disallowed. The claim shall identify the defaulting purchaser and any tax liability that remains unpaid. If a purchaser fails to make a timely payment of the amount of tax due, the supplier's deduction shall be limited to the amount due from the purchaser, plus any tax that accrues from that purchaser for a period of ten (10) days following the date of failure to pay. No additional deduction shall be allowed until the department has authorized the purchaser to make a new election under subsection (e). The department may require the deduction to be reported in the same manner as prescribed in Section 166 of the Internal Revenue Code.

(h) The supplier and each reseller of special fuel is considered to be a collection agent for this state with respect to that special fuel tax, which shall be set out on all invoices and billings as a separate line item.

(i) Except as provided in subsection (e), the tax imposed by section 28 of this chapter on special fuel imported from another state shall be paid by the licensed importer who has imported the nonexempt special fuel not later than three (3) business days after the earlier of:

- (1) the time that the nonexempt special fuel entered into Indiana; or
- (2) the time that a valid import verification number was assigned by the department under rules and procedures adopted by the department.

However, if the importer and the importer's reseller have previously entered into a tax precollection agreement as described in subsection (j), and the agreement remains in effect, the supplier with whom the agreement has been made shall become jointly liable with the importer for the tax and shall remit the tax to the department on behalf of the importer. This subsection does not apply to an importer with respect to imports in vehicles with a capacity of not more than five thousand four hundred (5,400) gallons.

(j) The department, a licensed importer, the reseller to a licensed importer, and a licensed supplier or permissive supplier may jointly enter into an agreement for the licensed supplier or permissive supplier to precollect and remit the tax imposed by this chapter with respect to special fuel imported from a terminal outside of Indiana in the same manner and at the same time as the tax would arise and be paid under this chapter if the special fuel had been received by the licensed supplier or permissive supplier at a terminal in Indiana. If

the supplier is also the importer, the agreement shall be entered into between the supplier and the department. However, any licensed supplier or permissive supplier may make an election with the department to treat all out-of-state terminal removals with an Indiana destination as shown on the terminal-issued shipping paper as if the removals were received by the supplier in Indiana pursuant to section 28 of this chapter and subsection (a), for all purposes. In this case, the election and notice of the election to a supplier's customers shall operate instead of a three (3) party precollection agreement. The department may impose requirements reasonably necessary for the enforcement of this subsection.

(k) Each licensed importer who is liable for the tax imposed by this chapter on nonexempt special fuel imported by a fuel transport truck having less than five thousand four hundred (5,400) gallons capacity, for which tax has not previously been paid to a supplier, shall remit the special fuel tax for the preceding month's import activities with the importer's monthly report of activities. A licensed importer shall be allowed to retain two-thirds (2/3) of the collection allowance provided for in section 37(a) of this chapter for the tax timely remitted by the importer directly to the state, subject to the same pass through provided for in section 37(a) of this chapter.

(l) A licensed importer shall be allowed to retain two-thirds (2/3) of the amount allowed in section 37(a) of this chapter of the tax timely remitted by the licensed importer directly to the state, subject to the same pass through provided for in section 37(a) of this chapter. *As added by P.L.277-1993(ss), SEC.44. Amended by P.L.18-1994, SEC.27; P.L.61-1996, SEC.2; P.L.65-1997, SEC.1.*

IC 6-6-2.5-36

Remittance of tax; procedures; deadline

Sec. 36. All suppliers required to remit the special fuel tax shall remit the special fuel taxes due by electronic fund transfer (as defined in IC 4-8.1-2-7) or by delivering in person or by overnight courier a payment by cashier's check, certified check, or money order to the department. The transfer or payment shall be made on or before the date the tax is due.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-37

Costs of collection, reporting, and remittance; retention of portion of remittance; amount; failure to report or remit on time

Sec. 37. (a) Every supplier and permissive supplier who properly remits tax under this chapter shall be allowed to retain one and six-tenths percent (1.6%) of the tax to cover the costs of collecting, reporting, and timely remitting the tax imposed by this chapter.

(b) The amount that the supplier is permitted to retain under subsection (a) shall be distributed by the supplier as follows:

(1) One-third (1/3) retained by the supplier.

(2) Two-thirds (2/3) to the wholesale distributor. If the special fuel is resold by that wholesale distributor or another wholesale

distributor to an eligible purchaser, the last wholesale distributor in the distribution process shall pass on one-half (1/2) of the two-thirds (2/3) to the eligible purchaser.

(3) If an eligible purchaser is the direct purchaser from a supplier, and that retail dealer or bulk end user is responsible for shipping the product, then the supplier shall pass through two-thirds (2/3) to the retail dealer or bulk end user. If the supplier is responsible for shipping the product, the supplier shall retain two-thirds (2/3) and pass through one-third (1/3) to the eligible purchaser.

(c) If a monthly report is filed or the amount due is remitted later than the time required by this chapter, the supplier shall pay to the department all of the special fuel tax the dealer collected from the sale of special fuel during the reporting period.

As added by P.L.277-1993(ss), SEC.44. Amended by P.L.18-1994, SEC.28.

IC 6-6-2.5-38

Duties and responsibilities of supplier in collection of tax; liability

Sec. 38. The tax the supplier collects on the sale of special fuel belongs to the state. A supplier shall hold the money in trust for the state and for payment to the department as provided in this chapter. In the case of a corporation or partnership, each officer, employee, or member of the employer who is in that capacity is under a duty to collect the tax, and is personally liable for the tax, penalty, and interest.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-39

Consumption of tax-exempt dyed or marked fuel for nonexempt purpose; remittance of tax

Sec. 39. Any person who has consumed tax-exempt dyed or marked special fuel, or both, for a nonexempt purpose, as permitted under section 62 of this chapter, shall remit the tax due by filing a monthly report and remitting the tax due on forms prescribed by the department.

As added by P.L.277-1993(ss), SEC.44. Amended by P.L.85-1995, SEC.23.

IC 6-6-2.5-40

Transportation of special fuel; requirements and procedures; violations

Sec. 40. (a) Each person operating a refinery, terminal, or bulk plant in Indiana shall prepare and provide to the driver of every vehicle receiving special fuel at the facility a shipping document setting out on its face the destination state as represented to the terminal operator by the shipper or the shipper's agent, except that an operator of a bulk plant in Indiana delivering special fuel into a vehicle with a capacity of not more than five thousand four hundred (5,400) gallons for subsequent delivery to an end consumer in

Indiana is exempt from this requirement.

(b) Every person transporting special fuel in vehicles upon the Indiana public highways shall carry on board a shipping paper issued by the terminal operator or the bulk plant operator of the facility where the special fuel was obtained, which shipping paper shall set out on its face the state of destination of the special fuel transported in the vehicle, except that operators of vehicles with a capacity of not more than five thousand four hundred (5,400) gallons that have received special fuel at a bulk plant in Indiana for delivery to an end consumer in Indiana are exempt from this provision with respect to the special fuel. A person who violates this subsection commits a Class A infraction (as defined in IC 34-28-5-4).

(c) Every person transporting special fuel in vehicles upon the public highways of Indiana shall provide the original or a copy of the terminal issued shipping document accompanying the shipment to the operator of the retail outlet or bulk plant to which delivery of the shipment was made. A person who knowingly violates or knowingly aids and abets another person in violating this subsection commits a Class D felony.

(d) Each operator of a special fuel retail outlet or bulk plant shall receive, examine, and retain for a period of thirty (30) days at the delivery location the terminal issued shipping document received from the transporter for every shipment of special fuel that is delivered to that location, with record retention of the shipping paper of three (3) years required offsite. A person who knowingly violates or knowingly aids and abets another person in violating this subsection commits a Class D felony.

(e) No bulk end user, retail dealer, bulk plant operator, or wholesale distributor shall knowingly accept delivery of special fuel into storage facilities in Indiana if that delivery is not accompanied by a shipping paper issued by the terminal operator or bulk plant operator, that sets out on its face Indiana as the state of destination of the special fuel. A person who knowingly violates or knowingly aids and abets another person in violating this subsection commits a Class D felony.

(f) The department shall provide for relief in a case where a shipment of special fuel is legitimately diverted from the represented destination state after the shipping paper has been issued by the terminal operator or where the terminal operator failed to cause proper information to be printed on the shipping paper. These relief provisions shall include a provision requiring that the shipper or its agent provide notification before the diversion or correction to the department if an intended diversion or correction is to occur, and the relief provision shall be consistent with the refund provisions of this chapter.

(g) The supplier and the terminal operator shall be entitled to rely for all purposes of this chapter on the representation by the shipper or the shipper's agent as to the shipper's intended state of destination or tax exempt use. The shipper, the importer, the transporter, the shipper's agent, and any purchaser, not the supplier or terminal

operator, shall be jointly liable for any tax otherwise due to the state as a result of a diversion of the special fuel from the represented destination state.

As added by P.L.277-1993(ss), SEC.44. Amended by P.L.18-1994, SEC.29; P.L.85-1995, SEC.24; P.L.1-1998, SEC.80.

IC 6-6-2.5-41

Licenses

Sec. 41. (a) Each supplier engaged in business in Indiana as a supplier shall first obtain a supplier's license. The fee for a supplier's license shall be five hundred dollars (\$500).

(b) Any person who desires to collect the tax imposed by this chapter as a supplier and who meets the definition of a permissive supplier may obtain a permissive supplier's license. Application for or possession of a permissive supplier's license shall not in itself subject the applicant or licensee to the jurisdiction of Indiana for any other purpose than administration and enforcement of this chapter. The fee for a permissive supplier's license is fifty dollars (\$50).

(c) Each terminal operator other than a supplier licensed under subsection (a) engaged in business in Indiana as a terminal operator shall first obtain a terminal operator's license for each terminal site. The fee for a terminal operator's license is three hundred dollars (\$300).

(d) Each exporter engaged in business in Indiana as an exporter shall first obtain an exporter's license. However, in order to obtain a license to export special fuel from Indiana to another specified state, a person shall be licensed either to collect and remit special fuel taxes or be licensed to deal in tax free special fuel in that other specified state of destination. The fee for an exporter's license is two hundred dollars (\$200).

(e) Each person who is not licensed as a supplier shall obtain a transporter's license before transporting special fuel by whatever manner from a point outside Indiana to a point inside Indiana, or from a point inside Indiana to a point outside Indiana, regardless of whether the person is engaged for hire in interstate commerce or for hire in intrastate commerce. The registration fee for a transporter's license is fifty dollars (\$50).

(f) Each person who wishes to cause special fuel to be delivered into Indiana on the person's own behalf, for the person's own account, or for resale to an Indiana purchaser, from another state in a fuel transport vehicle having a capacity of more than five thousand four hundred (5,400) gallons, or in a pipeline or barge shipment into storage facilities other than a qualified terminal, shall first make an application for and obtain an importer's license. The fee for an importer's license is two hundred dollars (\$200). This subsection does not apply to a person who imports special fuel that is exempt because the special fuel has been dyed or marked, or both, in accordance with section 31 of this chapter. This subsection does not apply to a person who imports nonexempt special fuels meeting the following conditions:

(1) The special fuel is subject to one (1) or more tax precollection agreements with suppliers as provided in section 35 of this chapter.

(2) The special fuel tax precollection by the supplier is expressly evidenced on the terminal-issued shipping paper as specifically provided in section 62(e)(2) of this chapter.

(g) A person desiring to import special fuel to an Indiana destination who does not enter into an agreement to prepay Indiana special fuel tax to a supplier or permissive supplier under section 35 of this chapter on the imports must do the following:

(1) Obtain a valid license under subsection (f).

(2) Obtain an import verification number from the department not earlier than twenty-four (24) hours before entering the state with each import, if importing in a vehicle with a capacity of more than five thousand four hundred (5,400) gallons.

(3) Display a proper import verification number on the shipping document, if importing in a vehicle with a capacity of more than five thousand four hundred (5,400) gallons.

(h) The department may require a person that wants to blend special fuel to first obtain a license from the department. The department may establish reasonable requirements for the proper enforcement of this subsection, including the following:

(1) Guidelines under which a person may be required to obtain a license.

(2) A requirement that a licensee file reports in the form and manner required by the department.

(3) A requirement that a licensee meet the bonding requirements specified by the department.

(i) The department may require a person that:

(1) is subject to the special fuel tax under this chapter;

(2) qualifies for a federal diesel fuel tax exemption under Section 4082 of the Internal Revenue Code; and

(3) is purchasing red dyed low sulfur diesel fuel;

to register with the department as a dyed fuel user. The department may establish reasonable requirements for the proper enforcement of this subsection, including guidelines under which a person may be required to register and the form and manner of reports a registrant is required to file.

As added by P.L.277-1993(ss), SEC.44. Amended by P.L.18-1994, SEC.30; P.L.85-1995, SEC.25; P.L.61-1996, SEC.3.

IC 6-6-2.5-42

Application for license; form and content; investigation; fingerprints

Sec. 42. (a) Each application for a license under section 41 of this chapter shall be made upon a form prepared and furnished by the department. It shall be subscribed to by the applicant and shall contain the information as the department may reasonably require for the administration of this chapter, including the applicant's federal identification number and, with respect to the applicant for an

exporter's license, a copy of the applicant's license to purchase or handle special fuel tax free in the specified destination state or states for which the export license is to be issued.

(b) The department shall investigate each applicant for a license under this section. No license shall be issued if the department determines that any one (1) of the following exists:

- (1) The application is not filed in good faith.
- (2) The applicant is not the real party in interest.
- (3) The license of the real party in interest has been revoked for cause.
- (4) Other reasonable cause for non-issuance exists.

(c) Applicants, including corporate officers, partners, and individuals, for a license issued by the commissioner may be required to submit their fingerprints to the commissioner at the time of applying. Officers of publicly held corporations and their subsidiaries shall be exempt from this fingerprinting provision. Fingerprints required by this section must be submitted on forms prescribed by the commissioner. The commissioner may forward to the Federal Bureau of Investigation or any other agency for processing all fingerprints submitted by license applicants. The receiving agency shall issue its findings to the commissioner. The license application fee shall be used to pay the costs of the investigation. The commissioner may maintain a file of fingerprints.
As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-43

Transporters; listing of vehicle descriptions with commissioner; contents

Sec. 43. (a) Each licensed transporter shall at the time of licensing and on an annual basis, list with the commissioner a description of all vehicles, including license numbers, to be used on the highways of Indiana in transporting special fuel from points outside Indiana to points inside Indiana and from points inside Indiana to points outside Indiana.

(b) The description required in subsection (a) must comply with what is reasonably required by the commissioner, including the carrying capacity of the vehicle. If the vehicle is a tractor-trailer type vehicle, the trailer is the vehicle that must be described. When additional vehicles are placed in service or when a vehicle previously listed is retired from service during the year, the commissioner shall be notified not more than ten (10) days after the change so that the listing of the vehicles may be kept accurate.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-44

Surety bond or cash deposit; filing by applicants

Sec. 44. (a) Concurrently with the filing of an application for a license under this chapter, the department may require the applicant to file with the commissioner a surety bond or cash deposit:

- (1) in an amount determined by the commissioner of not less

than two thousand dollars (\$2,000) or not more than a two (2) month tax liability for the applicant as estimated by the commissioner; and

(2) conditioned upon the keeping of records and the making of full and complete reports and payments as required by this chapter.

(b) If the applicant files a bond, the bond must:

(1) be with a surety company approved by the commissioner;

(2) name the applicant as the principal and the state as the obligee; and

(3) be on forms prescribed by the department.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-45

Disclosure of financial records; increase in bond or cash deposit

Sec. 45. The commissioner may, at the commissioner's reasonable discretion, require a licensee to furnish current certified, audited financial statements. If the commissioner determines that a licensee's financial condition warrants an increase in the bond or cash deposit, the commissioner may require the licensee to furnish an increased bond or cash deposit.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-46

Filing of new bond; conditions; cancellation of license; reduction of cash deposit by judgment; additional deposit

Sec. 46. (a) The commissioner may require a licensee to file a new bond with a satisfactory surety in the same form and amount if:

(1) liability upon the previous bond is discharged or reduced by the judgment rendered, payment made, or otherwise disposed of; or

(2) in the opinion of the commissioner, any surety on the previous bond becomes unsatisfactory.

If the new bond is unsatisfactory, the commissioner shall cancel the license. If the new bond is satisfactorily furnished, the commissioner shall release in writing the surety on the previous bond from any liability accruing after the effective date of the new bond.

(b) If a licensee has a cash deposit with the commissioner and the deposit is reduced by a judgment rendered, payment made, or otherwise disposed of, the commissioner may require the licensee to make a new deposit equal to the amount of the reduction.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-47

Deposit insufficient to ensure payment; written demand to file new bond; requirements; cancellation of license

Sec. 47. (a) If the commissioner reasonably determines that the amount of the existing bond or cash deposit is insufficient to ensure payment to the state of the tax and any penalty and interest for which the licensee is or may become liable, the licensee shall, upon written

demand of the commissioner, file a new bond or increase the cash deposit. The commissioner shall allow the licensee at least thirty (30) days to secure the increased bond or cash deposit.

(b) The new bond or cash deposit must meet the requirements set forth in this chapter.

(c) If the new bond or cash deposit required under this section is unsatisfactory, the commissioner shall cancel the licensee's license certificate.

As added by P.L.277-1993(ss), SEC.44. Amended by P.L.18-1994, SEC.31.

IC 6-6-2.5-48

Release of surety from liability; written request; notice; cancellation

Sec. 48. (a) Sixty (60) days after making a written request for release to the commissioner, the surety of a bond furnished by a licensee is released from any liability to the state accruing on the bond after the sixty (60) day period. The release does not affect any liability accruing before the expiration of the sixty (60) day period.

(b) The commissioner shall promptly notify the licensee furnishing the bond that a release has been requested. Unless the licensee obtains a new bond that meets the requirements of this chapter and files with the commissioner the new bond within the sixty (60) day period, the commissioner shall cancel the license.

(c) Sixty (60) days after making a written request for release to the commissioner, the cash deposit provided by a licensee is canceled as security for any obligation accruing after the expiration of the sixty (60) day period. However, the commissioner may retain all or part of the cash deposit for up to three (3) years and one (1) day as security for any obligations accruing before the effective date of the cancellation. Any part of the deposit that is not retained by the commissioner shall be released to the licensee. Before the expiration of the sixty (60) day period, the licensee must provide the commissioner with a bond that satisfies the requirements of this chapter or the commissioner shall cancel the license.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-49

Denial of license; hearing; notice

Sec. 49. Before being denied a license, the department shall grant the applicant a hearing of which the applicant shall be given at least five (5) days written notice.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-50

Issuance of license

Sec. 50. If the application and bond are approved, the department shall issue a license and as many copies as the licensee has places of business for which a license is required.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-51**Validity of license**

Sec. 51. A license is valid until suspended, revoked for cause, or canceled.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-52**Transfer of license; prohibition**

Sec. 52. No license is transferable to another person or to another place of business.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-53**Display of license at place of business**

Sec. 53. Each license shall be preserved and conspicuously displayed at the place of business for which it is issued.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-54**Discontinuance of business; surrender of license**

Sec. 54. Upon the discontinuance of the business, the license issued for the place shall be immediately surrendered to the department.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-55**Notice of discontinuance, sale, or transfer of business; content; liability**

Sec. 55. Whenever any person licensed to do business under this chapter discontinues, sells, or transfers the business, the licensee shall immediately notify the department in writing of the discontinuance, sale, or transfer. The notice shall give the date of discontinuance, sale, or transfer and in the event of the sale or transfer of the business, the name and address of the purchaser or transferee. The licensee shall be liable for all taxes, interest, and penalties that accrue or may be owing and any criminal liability for misuse of the license that occurs prior to issuance of the notice.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-56**Repealed**

(Repealed by P.L.61-1996, SEC.24.)

IC 6-6-2.5-56.5**Suppliers, permissive suppliers, and licensed importers; reporting requirements; violations**

Sec. 56.5. (a) For the purpose of determining the amount of special tax due, every supplier shall file with the department on forms prescribed and furnished by the department, a verified statement by the supplier. The department may require the reporting

of any information reasonably necessary to determine the amount of special fuel tax due.

(b) The reports required by this section that contain information for the preceding calendar month shall be filed before the twentieth day of each month.

(c) Each supplier and permissive supplier shall separately report:

(1) all loads of special fuel received by the supplier or permissive supplier for export to another state; and

(2) all loads of special fuel removed by the supplier or permissive supplier out of an out-of-state terminal for delivery to Indiana and sold tax free to persons for import into Indiana;

in accordance with the shipping papers issued by the terminal operator. A person who knowingly violates this subsection commits a Class D felony.

(d) Each licensed importer shall file monthly with the department a verified sworn statement of operations within Indiana and any other information with respect to the source and means of transportation of special fuel as the department may require and on forms prescribed and furnished by the department. A person who knowingly violates this subsection commits a Class D felony.

As added by P.L.65-1997, SEC.2.

IC 6-6-2.5-57

Terminal operators; reporting requirements; inventory records

Sec. 57. (a) Each person operating a terminal in Indiana shall file monthly reports of operations within Indiana on forms prescribed by the department. The department may require the reporting of any information it considers reasonably necessary.

(b) For purposes of reporting and determining tax liability under this chapter, every licensee shall maintain inventory records as required by the department.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-58

Final report upon discontinuance, sale, or transfer of business or revocation of license; payment of taxes and penalties

Sec. 58. Every licensee shall, upon the discontinuance, sale, or transfer of the business or upon the cancellation or revocation of a license, make a report as required under this chapter marked "Final Report", and shall pay all special fuel taxes and penalties that may be due the state except as may otherwise be provided by law. The payment shall be made to the department in accordance with sections 35 and 36 of this chapter.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-59

Exporters; reporting requirements

Sec. 59. Each person operating as an exporter shall file monthly reports with the department on forms prescribed and furnished by the department concerning the amount of special fuel exported from

Indiana. The department may require the reporting of any information it considers reasonably necessary. However, the report shall contain the following information:

- (1) The special fuel loaded in Indiana for delivery outside of Indiana.
- (2) The gallons delivered to taxing jurisdictions outside Indiana.
- (3) The name and federal employer identification number of the receiver of the exported special fuel.
- (4) The date of the shipments.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-60

Transporters; reporting requirements; failure to report; penalty; waiver of report

Sec. 60. (a) Each person operating as a transporter in Indiana shall file monthly reports with the department on forms prescribed and furnished by the department concerning the amount of special fuel transported in Indiana. The department may require the reporting of any information it considers reasonably necessary to track the movement of special fuel in Indiana.

(b) If a transporter fails to make the reports required by this section, the person is subject to a civil penalty of one thousand dollars (\$1,000) for each violation, as reasonably determined by the department.

(c) The reports required by this section are for information purposes only and the commissioner may waive the filing of the reports if the reports are unnecessary for the proper administration of this chapter.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-61

Composite and modified reports

Sec. 61. The department may aggregate the information required in any of the reports required by this chapter into one (1) or more composite or modified reports in order to avoid duplicate reporting.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-62

Special fuel restrictions; violations; exemptions

Sec. 62. (a) No person shall import, sell, use, deliver, or store in Indiana special fuel in bulk as to which dye or a marker, or both, has not been added in accordance with section 31 of this chapter, or as to which the tax imposed by this chapter has not been paid to or accrued by a licensed supplier or licensed permissive supplier as shown by a notation on a terminal-issued shipping paper subject to the following exceptions:

- (1) A supplier shall be exempt from this provision with respect to special fuel manufactured in Indiana or imported by pipeline or waterborne barge and stored within a terminal in Indiana.
- (2) An end user shall be exempt from this provision with

respect to special fuel in a vehicle supply tank when the fuel was placed in the vehicle supply tank outside of Indiana.

(3) A licensed importer, and transporter operating on the importer's behalf, that transports in vehicles with a capacity of more than five thousand four hundred (5,400) gallons, shall be exempt from this prohibition if the importer or the transporter has met all of the following conditions:

(A) The importer or the transporter before entering onto the highways of Indiana has obtained an import verification number from the department not earlier than twenty-four (24) hours before entering Indiana.

(B) The import verification number must be set out prominently and indelibly on the face of each copy of the terminal-issued shipping paper carried on board the transport truck.

(C) The terminal origin and the importer's name and address must be set out prominently on the face of each copy of the terminal-issued shipping paper.

(D) The terminal-issued shipping paper data otherwise required by this chapter is present.

(E) All tax imposed by this chapter with respect to previously requested import verification number activity on the account of the importer or the transporter has been timely remitted.

In every case, a transporter acting in good faith is entitled to rely upon representations made to the transporter by the fuel supplier or importer and when acting in good faith is not liable for the negligence or malfeasance of another person. A person who knowingly violates or knowingly aids and abets another person in violating this subsection commits a Class D felony.

(b) No person shall export special fuel from Indiana unless that person has obtained an exporter's license or a supplier's license or has paid the destination state special fuel tax to the supplier and can demonstrate proof of export in the form of a destination state bill of lading. A person who knowingly violates or knowingly aids and abets another person in violating this subsection commits a Class D felony.

(c) No person shall operate or maintain a motor vehicle on any public highway in Indiana with special fuel contained in the fuel supply tank for the motor vehicle that contains dye or a marker, or both, as provided under section 31 of this chapter. This provision does not apply to persons operating motor vehicles that have received fuel into their fuel tanks outside of Indiana in a jurisdiction that permits introduction of dyed or marked, or both, special fuel of that color and type into the motor fuel tank of highway vehicles or to a person that qualifies for the federal fuel tax exemption under Section 4082 of the Internal Revenue Code and that is registered with the department as a dyed fuel user. A person who knowingly:

(1) violates; or

(2) aids and abets another person in violating;

this subsection commits a Class A infraction. However, the violation is a Class A misdemeanor if the person has committed one (1) prior unrelated violation of this subsection, and a Class D felony if the person has committed more than one (1) prior unrelated violation of this subsection.

(d) No person shall engage in any business activity in Indiana as to which a license is required by section 41 of this chapter unless the person shall have first obtained the license. A person who knowingly violates or knowingly aids and abets another person in violating this subsection commits a Class D felony.

(e) No person shall operate a motor vehicle with a capacity of more than five thousand four hundred (5,400) gallons that is engaged in the shipment of special fuel on the public highways of Indiana and that is destined for a delivery point in Indiana, as shown on the terminal-issued shipping papers, without having on board a terminal-issued shipping paper indicating with respect to any special fuel purchased:

- (1) under claim of exempt use, a notation describing the load or the appropriate portion of the load as Indiana tax exempt special fuel;
- (2) if not purchased under a claim of exempt use, a notation describing the load or the appropriate portion thereof as Indiana taxed or pretaxed special fuel; or
- (3) if imported by or on behalf of a licensed importer instead of the pretaxed notation, a valid verification number provided before entry into Indiana by the department or the department's designee or appointee, and the valid verification number may be handwritten on the shipping paper by the transporter or importer.

A person is in violation of subdivision (1) or (2) (whichever applies) if the person boards the vehicle with a shipping paper that does not meet the requirements described in the applicable subdivision (1) or (2). A person in violation of this subsection commits a Class A infraction (as defined in IC 34-28-5-4).

(f) A person may not sell or purchase any product for use in the supply tank of a motor vehicle for general highway use that does not meet ASTM standards as published in the annual Book of Standards and its supplements unless amended or modified by rules adopted by the department under IC 4-22-2. The transporter and the transporter's agent and customer have the exclusive duty to dispose of any product in violation of this section in the manner provided by federal and state law. A person who knowingly:

- (1) violates; or
- (2) aids and abets another in violating;

this subsection commits a Class D felony.

(g) This subsection does not apply to the following:

- (1) A person that:
 - (A) inadvertently manipulates the dye or marker concentration of special fuel or coloration of special fuel;
- and

(B) contacts the department within one (1) business day after the date on which the contamination occurs.

(2) A person that affects the dye or marker concentration of special fuel by engaging in the blending of the fuel, if the blender:

(A) collects or remits, or both, all tax due as provided in section 28(g) of this chapter;

(B) maintains adequate records as required by the department to account for the fuel that is blended and its status as a taxable or exempt sale or use; and

(C) is otherwise in compliance with this subsection.

A person may not manipulate the dye or marker concentration of a special fuel or the coloration of special fuel after the special fuel is removed from a terminal or refinery rack for sale or use in Indiana. A person who knowingly violates or aids and abets another person to violate this subsection commits a Class D felony.

(h) This subsection does not apply to a person that receives blended fuel from a person in compliance with subsection (g)(2). A person may not sell or consume special fuel if the special fuel dye or marker concentration or coloration has been manipulated, inadvertently or otherwise, after the special fuel has been removed from a terminal or refinery rack for sale or use in Indiana. A person who knowingly:

(1) violates; or

(2) aids and abets another to violate;

this subsection commits a Class D felony.

(i) A person may not engage in blending fuel for taxable use in Indiana without collecting and remitting the tax due on the untaxed portion of the fuel that is blended. A person who knowingly:

(1) violates; or

(2) aids and abets another to violate;

this subsection commits a Class D felony.

As added by P.L.277-1993(ss), SEC.44. Amended by P.L.18-1994, SEC.33; P.L.85-1995, SEC.26; P.L.61-1996, SEC.4; P.L.1-1998, SEC.81.

IC 6-6-2.5-63

Failure of suppliers, permissive suppliers, importers, and blenders to collect or timely remit tax; penalties

Sec. 63. (a) A supplier, permissive supplier, importer, or blender who knowingly fails to collect or timely remit tax otherwise required to be paid to the department under section 35 of this chapter or pursuant to a tax precollection agreement under section 35 of this chapter is liable for the uncollected tax plus a penalty equal to one hundred percent (100%) of the uncollected tax.

(b) Collection of a special fuel tax arising from an out-of-state transaction does not in itself subject a supplier or permissive supplier to the jurisdiction of Indiana for any tax liability arising outside of this chapter.

(c) A person who fails or refuses to pay over to the state the tax

on special fuel at the time required in this chapter or who fraudulently withholds or appropriates or otherwise uses the money or any portion thereof belonging to the state commits a Class D felony.

(d) A person who negligently disregards any provision of this chapter is subject to a civil penalty of five hundred dollars (\$500) for each separate occurrence of negligent disregard as determined by the commissioner.

As added by P.L.277-1993(ss), SEC.44. Amended by P.L.18-1994, SEC.34; P.L.65-1997, SEC.3.

IC 6-6-2.5-64

Civil penalties; exemption

Sec. 64. (a) If any person liable for the tax files a false or fraudulent return, there shall be added to the tax an amount equal to the tax the person evaded or attempted to evade.

(b) The department shall impose a civil penalty of one thousand dollars (\$1,000) for a person's first occurrence of transporting special fuel without adequate shipping papers as required under sections 40, 41(g), and 62(e) of this chapter, unless the person shall have complied with rules adopted under IC 4-22-2. Each subsequent occurrence described in this subsection is subject to a civil penalty of five thousand dollars (\$5,000).

(c) The department shall impose a civil penalty on the operator of a vehicle of two hundred dollars (\$200) for the initial occurrence, two thousand five hundred dollars (\$2,500) for the second occurrence, and five thousand dollars (\$5,000) for the third and each subsequent occurrence of a violation of either:

- (1) the prohibition of use of dyed or marked special fuel, or both, on the Indiana public highways, except for a person that qualifies for the federal fuel tax exemption under Section 4082 of the Internal Revenue Code and that is registered with the department as a dyed fuel user; or
- (2) the use of special fuel in violation of section 28(i) of this chapter.

(d) A supplier that makes sales for export to a person:

- (1) who does not have an appropriate export license; or
- (2) without collection of the destination state tax on special fuel nonexempt in the destination state;

shall be subject to a civil penalty equal to the amount of Indiana's special fuel tax in addition to the tax due.

(e) The department may impose a civil penalty of one thousand dollars (\$1,000) for each occurrence against every terminal operator that fails to meet shipping paper issuance requirements under section 40 of this chapter.

(f) Each importer or transporter who knowingly imports undyed or unmarked special fuel, or both, in a transport truck without:

- (1) a valid importer license;
- (2) a supplier license;
- (3) an import verification number, if transporting in a vehicle

with a capacity of more than five thousand four hundred (5,400) gallons; or

(4) a shipping paper showing on the paper's face as required under this chapter that Indiana special fuel tax is not due;

is subject to a civil penalty of ten thousand dollars (\$10,000) for each occurrence described in this subsection.

(g) This subsection does not apply to a person if section 62(g) of this chapter does not apply to the person. A:

(1) person that manipulates the dye or marker concentration of special fuel or the coloration of special fuel after the special fuel is removed from a terminal or refinery rack for sale or use in Indiana; and

(2) person that receives the special fuel;

are jointly and severally liable for the special fuel tax due on the portion of untaxed fuel plus a penalty equal to the greater of one hundred percent (100%) of the tax due or one thousand dollars (\$1,000).

(h) A person that engages in blending fuel for taxable sale or use in Indiana and does not collect and remit all tax due on untaxed fuel that is blended is liable for the tax due plus a penalty that is equal to the greater of one hundred percent (100%) of the tax due or one thousand dollars (\$1,000).

As added by P.L.277-1993(ss), SEC.44. Amended by P.L.18-1994, SEC.35; P.L.85-1995, SEC.27; P.L.61-1996, SEC.5.

IC 6-6-2.5-65

Shipping documents; violations; impoundment, seizure, and sale of vehicle; evidence; release

Sec. 65. (a) If a person is found operating a motor vehicle in violation of section 40(b), 40(c), or 62(e) of this chapter, the vehicle and its cargo is subject to impoundment, seizure, and subsequent sale, in accordance with IC 6-8.1. The failure of the operator of a motor vehicle to have on-board when loaded a terminal-issued bill of lading with a destination state machine printed on its face or which fails to meet the descriptive annotation requirements in section 40(b), 41(g)(2), 41(g)(3), or 62(e) of this chapter, whichever may apply, shall be presumptive evidence of a violation sufficient to warrant impoundment and seizure of the vehicle and its cargo.

(b) After a person:

(1) is found in violation of section 62(c) of this chapter; and

(2) pays the tax due to the state;

the department shall issue a release to the person. The release must permit the dyed or marked special fuel, or both, that is the subject of the violation to be consumed on Indiana public highways within a grace period of twenty-four (24) hours after the time that the release is issued. After the grace period expires, the person shall be considered in violation of section 62(c) of this chapter if the person or the person's agent operates or maintains the same motor vehicle on an Indiana public highway with special fuel containing dye or a marker, or both.

As added by P.L.277-1993(ss), SEC.44. Amended by P.L.18-1994, SEC.36; P.L.85-1995, SEC.28; P.L.61-1996, SEC.6.

IC 6-6-2.5-66

Listed tax

Sec. 66. The special fuel tax is a listed tax for purposes of IC 6-8.1.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-67

Use of tax revenues

Sec. 67. The tax collected on the use of special fuel shall be used only for highway purposes and for payment of any part of the cost of traffic policing and traffic safety incurred by the state or any of its political subdivisions, as authorized by law.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-68

Transfer of funds to auditor; distribution

Sec. 68. (a) The administrator shall transfer the next twenty-five million dollars (\$25,000,000) of the taxes that are collected under this chapter and received during a period beginning July 1 of a year and ending June 30 of the immediately succeeding year to the auditor of state for distribution in the following manner:

(1) Thirty percent (30%) to each of the counties, cities, and towns eligible to receive a distribution from the local road and street account under IC 8-14-2 and in the same proportion among the counties, cities, and towns as funds are distributed under IC 8-14-2-4.

(2) Thirty percent (30%) to each of the counties, cities, and towns eligible to receive a distribution from the motor vehicle highway account under IC 8-14-1 and in the same proportion among the counties, cities, and towns as funds are distributed from the motor vehicle highway account under IC 8-14-1.

(3) Forty percent (40%) to the Indiana department of transportation.

(b) The auditor of state shall hold all amounts of collections received from the administrator that are made during a particular month and shall distribute all of those amounts under subsection (a) on the fifth day of the immediately succeeding month.

(c) All amounts distributed under subsection (a) may only be used for purposes that money distributed from the motor vehicle highway account may be expended under IC 8-14-1.

(d) All revenue collected under this chapter shall be used in the same manner as the revenue collected under IC 6-6-1.1. The administrator shall, after the transfers specified in subsection (a), deposit the remainder of the revenues collected under this chapter in the same manner that revenues are deposited under IC 6-6-1.1-802.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-69

Class actions for refund of tax; prerequisites

Sec. 69. A class action for the refund of a tax subject to this chapter may not be maintained in any court, including the Indiana tax court, on behalf of a person who has not complied with sections 32 and 33 of this chapter before the certification of a class. A refund of taxes to a member of a class in a class action is subject to the time limits set forth in sections 33 and 34 of this chapter based on the time the class member filed the required claim for refund with the department.

As added by P.L.277-1993(ss), SEC.44.

IC 6-6-2.5-70

Inspections

Sec. 70. (a) The department may conduct inspections for and enforce the laws concerning coloration of diesel fuel violations, sulfur content violations, marker violations, and shipping paper violations at any place where taxable fuel is or may be loaded in transport vehicles, produced, or stored. These places may include, but are not limited to:

- (1) a terminal;
- (2) a fuel storage facility that is not a terminal;
- (3) a retail fuel facility; or
- (4) a designated inspection site (defined as any state highway inspection station, weigh station, agricultural inspection station, mobile station, or other location designated by the commissioner).

(b) Inspections to determine violations under this chapter and enforcement of this chapter may be conducted by the state police department, agents of the department, Indiana state police motor carrier inspectors (in addition to their duties defined under IC 10-11-2-26), and any other law enforcement officer through procedures established by the department. Agents of the department have the same power and authority provided to authorized personnel under IC 16-44-2-11 and IC 16-44-2-12.

(c) The department may determine and approve all equipment used to test dyes, markers, and the chemical composition of fuel inspected under this chapter.

As added by P.L.18-1994, SEC.37. Amended by P.L.85-1995, SEC.29; P.L.2-2003, SEC.37.

IC 6-6-2.5-71

Sealing special fuel or kerosene pump; compliance; penalty

Sec. 71. (a) The department or any agent of the department may seal a special fuel or kerosene pump or impound a vehicle that does not have a sealable pump and post a sign that states that transactions involving special fuel or kerosene may not be made at the person's location if any of the following occur:

- (1) A person becomes delinquent in payment of a tax due under this chapter.

(2) There is evidence that the revenue of the seller of fuel is in jeopardy.

(3) A person sells special fuel or kerosene without being licensed as required by this chapter.

(4) A person sells special fuel or kerosene without being bonded as required by the department.

(5) A person sells fuel that is taxable under this chapter without charging special fuel tax. However, this subdivision does not apply to a seller that acts in good faith and sells undyed special fuel to a person with a valid tax exemption certificate on file with the seller.

(6) A person sells dyed or marked special fuel for use in a motor vehicle operated on a public highway.

(b) A pump sealed under subsection (a) may remain sealed and a sign posted under subsection (a) may remain posted until all of the following have occurred:

(1) All reports are filed and the fees and taxes imposed under this chapter are paid in full.

(2) The interest and penalties imposed under this chapter, IC 6-8.1-10-1, and IC 6-8.1-10-2 are paid in full.

(3) The license required by this chapter is obtained.

(4) The bond, letter of credit, or cash deposit required by this chapter is provided in the amount required by the department.

(c) A person that sells special fuel or kerosene in Indiana shall allow the agents of the department to seal gallonage totalizers of metered pumps operated by or on behalf of the person selling special fuel or kerosene.

(d) If the department determines that a person is selling special fuel or kerosene from a metered pump in Indiana without an effectively sealable gallonage totalizer, the seller, at the department's request, shall:

(1) adapt the pump to the department's specifications so that the pump may be effectively sealed; or

(2) replace, in whole or in part, the pump with a pump employing an effectively sealable gallonage totalizer, as determined by the department.

(e) A person's failure to comply with subsection (c) or (d) shall be considered evidence that the revenue of the person is in jeopardy.

(f) A person that, without authorization, removes, alters, defaces, or covers a sign that:

(1) is posted by the department; and

(2) states that transactions involving special fuel or kerosene may not be made at a location;

commits a Class B misdemeanor. However, the offense is a Class D felony if the offense is committed with intent to evade the tax imposed by this chapter or defraud the state.

(h) A person that sells special fuel or kerosene shall notify the department of the following:

(1) A broken fuel pump seal.

(2) A removed, altered, defaced, or covered sign that was

posted by the department.

(i) A person that sells special fuel or kerosene that fails to notify the department, as required by subsection (h), after:

(1) a fuel pump seal is broken; or

(2) a sign that was posted by the department is removed, altered, defaced, or covered;

commits a Class D felony.

As added by P.L.85-1995, SEC.30.

IC 6-6-2.5-72

Reports; electronic filing

Sec. 72. The administrator may require that all reports required to be filed under section 56.5, 57, or 60 of this chapter must be filed in an electronic format prescribed by the administrator.

As added by P.L.176-2006, SEC.4.